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# WiFi in Utah: Legal and Social Issues

by Cheryl B. Preston

All over Utah, parents are buying their children the tools necessary to access astonishingly degrading and violent sexually explicit materials. For instance, innocent looking gaming systems, *i.e.*, PlayStation Portable, X-Box 360, and Nintendo Wii, can access the internet and are available everywhere from around \$130 to \$500. Many minors also have internet enabled cell phones, PDAs, and Blackberrys. Most of these systems do not come with a content filter and cannot be modified by software to add any protections.

These tools, as well as laptop computers, can pick up wireless internet signals in "hot spots" all over Utah, including in Salt Lake City alone, Liberty Park, Main Street, the library, and numerous cafes and restaurants.<sup>1</sup> And, as more devices become available with internet access capacity, more locations in Utah and around the country are boasting of "free wireless access" provided by governments, mall owners, and internet service providers who enjoy the advertising and hope to lure free users to faster, paid programs. In Utah, hundreds of businesses from Logan to St. George (and everywhere in between) provide free wireless internet access,<sup>2</sup> and proposals are in the works for more, including city-wide access. In addition, hundreds of homes in Utah are set up with wireless routers. These electromagnetic signals cannot be stopped at property lines, and when not secured with a password or otherwise, they can be used by anyone on the street or neighboring property.

Law enforcement agencies are trying to draw attention to the risks of identity theft, invasion of privacy, and other computer crimes perpetuated through the use of someone else's unsecured wireless network.<sup>3</sup> An often overlooked, and more serious long term concern, is the risk of WiFi hotspots is to the wellbeing of our youth.

Anyone familiar with the internet now knows that it has become a marketing miracle for commercial pornographers and a haven for sexual predators. The harm caused by internet pornography is extensive and devastating. The FBI claims that "[p]ornography is often used in the sexual victimization of children."<sup>4</sup> Pornography is an effective tool for seduction because it "is used to lower the natural, innate resistance of children to performing sexual acts, thus functioning as a primer for child sexual abuse."<sup>5</sup> One recent study suggested a direct link between the use of pornography and actual acts of sexual abuse against children.<sup>6</sup> It showed that as many as 85% of those convicted for trafficking in child pornography admitted also to inappropriately touching or raping children.<sup>7</sup>

## The Harm that Comes from Unsecured Wireless Connections

While the abilities to instant message and access information on the internet are truly spectacular advancements with vast educational, business, and inter-personal benefits, the world wide web comes with real costs. In addition to the illegal material, such as obscenity and pornography made using child victims, millions of other websites are inappropriate for minors even if currently legal.<sup>8</sup> A court considering the constitutionality of the federal Child Online Protection Act recently estimated, "A little more than 1 percent of all Web pages on the Surface Web (amounting to approximately 275 million to 700 million Web pages) are sexually explicit."<sup>9</sup>

Parents and educators are becoming increasingly aware of online pornography and are fighting back by installing filters on home and school computers, establishing computer use rules, and monitoring home computer use. Nevertheless, few are aware of the extent to which the internet can be freely accessed in other places and by other means, such as through the neighbor's wireless network or at a shop. Away from parental controls and without the filters or other restrictions on their home and school computers, minors can easily browse lurid obscenity that more than answers their curiosity, be trapped in pornographic sites they didn't intend to access, receive less-than-wholesome pictures from friends and casual acquaintances (including those they met on MySpace and FaceBook), and, with the help of a digital or phone camera, send pictures parents might not even imagine them capable of taking.

Moreover, free wireless internet access can actually assist those who peddle child pornography, obscenity, and other sexually explicit material. Service providers of free wireless hot spots are not required to verify or retain information, even if they require a log in name; anyone using the wireless signal can view and trade illicit materials without being traced. These free wireless hot spots provide "unparalleled anonymity for traders of child pornography."<sup>10</sup>

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### Socially Responsible Wireless Networks

Enabling ordinary protections on a wireless network is simple and can be done by anyone who sets up such a system, including individual users in homes. When a user sets up a wireless router, the instructions typically ask the user if he or she wishes to secure the network by password. Thus, during the setup procedure for most routers, the user can enable a password; then only those who are given the password can log on to the internet service. In contrast to filters, which require continual updates, the one-time password protecting of wireless internet networks is easy and free.

Securing wireless networks is smart for other reasons. An unsecured wireless network is a virtual invitation to outsiders to intercept personal information, credit card numbers, passwords and other communications sent over the web. In addition, because online crimes, copyright infringement, obscenity, child pornography, fraud, and other illegal use of computers can be traced to particular computers and networks, a wireless owner should be most reluctant to have an unsecured network to which others can gain access and use for illegal and inappropriate purposes.

A second choice for those deploying a wireless internet connection is to install a filter that is reasonably effective in restricting the availability of sexually explicit content through the connection. Although filters are not 100% effective, parents should be able to assume that wireless networks are either secured or protected by filters designed to protect minors.

### Regulating Wireless Connections

We would like to believe that Utahns will soon become sufficiently aware of the risks and sufficiently socially responsible to secure or filter all wireless networks; but that may not be true. The question then arises about how to require those who choose to use wireless networks to take the precautions necessary to protect children.

### Existing Internet Pornography Laws

Currently, there are no enforceable federal laws punishing the online posting or viewing of sexually explicit material (outside of a public library that accepts federal funds)<sup>11</sup> unless the material qualifies under the very limited and strict Supreme Court definition of "obscenity"<sup>12</sup> or is pornography created using actual children.<sup>13</sup> And, even so, obscenity and child porn is easily accessible on the web since enforcement efforts have not even begun to deter the vast onslaught of such material.

Utah has statutes criminalizing the distribution of pornography, *see* UTAH CODE ANN. § 76-10-1204 (Supp. 2007), "dealing in materials harmful to minors," *Id.* § 76-10-1206 (Supp. 2007), and posting pornography on the internet if the content provider

is domiciled in Utah, *see id.* § 76-10-1233 (Supp. 2007). None of these statutes, however, regulate the millions of pornographic websites that are posted by content providers outside of Utah and, thus, have done little to stop the inundation of sexually explicit material on the web.

One might argue that making an unsecured wireless network available in Utah, especially to minors, is a form of "distributing" pornography. Although most network owners lack the requisite "intent" under the Utah statutes, someone who intentionally provides to another person, especially a minor, access to pornography on the internet would presumably fall within the statutory language. These sections explicitly exempt "internet service providers," but that term is defined to include only those who provide internet access as a business with the intent to make a profit. *Id.* § 76-10-1230 (5)(a) (Supp. 2007).

One provision of Utah law that might prove very helpful in addressing the WiFi problem is UTAH CODE SECTION 76-10-1231 (Supp. 2007). It requires an internet service provider to "filter content to prevent the transmission of material harmful to minors to the consumer," *Id.* § 76-10-1231(1)(a). The provider must give a conspicuous notice that a consumer of the service may request a content block, *see id.* § 76-10-1231(2). To satisfy the statute, a service provider must, upon request, provide a "commercially reasonable" in-network filter or provide, as a billable service, a filter the consumer can install on the consumer's computer. *Id.* § 76-10-1231(1)(b), (3)(a). As many wireless devices, such as PDAs cannot accept filtering software, the only reasonable solution will be an in-network filter. Thus, when a wireless network is provided by a commercial provider, a consumer in Utah may insist on the protection of a reasonable filter designed to block material "harmful to minors," defined broadly by Utah law. *See id.* § 76-10-1201(5) (Supp. 2007). An internet service provider that offers a "free" service for the purpose of advertising its business and, hopefully, convincing its "free" users to move to a higher quality, paid service, is a commercial internet service provider. If a commercial internet service provider fails, following notice, to comply with the law by providing an in-network filter or a filter service, it is subject to a fine up to \$10,000 per day and may be guilty of a misdemeanor, *see id.* § 76-10-1231(5). Notwithstanding its apparent applicability, this statute has not yet been widely used in the WiFi context.

### Existing Nuisance Law

When a wireless signal, with its potential for harm, invades the private property of another without that property owner's consent, a strong parallel can be drawn to existing nuisance law. The Restatement (Second) of Torts defines a private nuisance as "a nontrespassory invasion of another's interest in the private use and

enjoyment of land." RESTATEMENT (SECOND) OF TORTS § 821D (1979).

Statute and case law have established that nuisance offenses are actionable by cities, states, and private parties. Common nuisances include "polluting smokestacks, corroded tanks leaking hazardous wastes into the groundwater, barking dogs, noisy trains, and smelly hog farms."<sup>14</sup> Nuisance claims succeed against all kinds of annoyances emanating from neighboring property, such as vibrations, fireworks displays, noise from drinking parties and barking dogs, ground water seepage, firing guns, and urinating so others can see.<sup>15</sup> Utah cases have awarded damages for such nuisances as the "noise emanating from [a theater] as well as the conduct of [its] patrons," *Johnson v. Mt. Ogden Enterprises, Inc.*, 460 P.2d 333, 336 (Utah 1969), and a café "where patrons created loud and disturbing noises [and] used vulgar and obscene language audible to nearby residents." *Wade v. Fuller*, 365 P.2d 802, 802 (Utah 1961).

Salt Lake City, Utah prohibits by code a range of nuisances, including diseased trees and shrubs, *see* SALT LAKE CITY, UT, CODE § 2.26.230 (1988); "[o]ffensive [c]onduct," *id.* § 5.54.150(A) (1999); nudity, houses for prostitution and "lewdness," *id.* § 11.16.070 (1986); vicious and foul smelling animals, *see id.* § 8.04.370(B) (2) – (3) (1999), animals that "bark[], whine[] or howl[]," *id.* § 8.04.370(B) (6), and "noxious" substances, *id.* § 17.36.080(B) (5) (1986). In Salt Lake City a "public nuisance" is an act or omission that "annoys" others, *id.* § 11.32.010(A)(1) (1986), or "[o]ffends public decency," *id.* (A)(2). And, furthermore, "[a]n act which affects another person or persons in any of the ways specified in this section is still a nuisance regardless of whether or not the extent of annoyance or damage inflicted on individuals is unequal." *Id.* §

11.32.010(B).

St. George, Utah prohibits, *inter alia*, any "loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others," ST. GEORGE, UT, CODE § 4-2-3(H) (1981), intrusive floodlights and lighted signs, *id.* § 9-13-7(I) (2005), and refuse in public street, *id.* § 4-2-3(B) (2003), as well the use of "threatening, abusive, insulting or indecent language;... commit[ing] any obscene or indecent act;... fight[ing]; or... create[ing] a public disturbance or nuisance in any park," *id.* § 7-3-1(F) (2003). Although this ordinance covers speech, "such ordinances, if drafted narrowly and clearly, are valid exercises of the municipality's power to protect the decency, morality, peace, comfort, and good order of the community." 6A McQUILLIN MUNICIPAL CORPORATIONS § 24:113 (3rd ed. 2007). If the ordinance covered the use of obscenities unrelated to preservation of the peace, as required by the delegation of power from the state of Utah to municipalities, the ordinance would be invalid. *See Salt Lake City v. Davison*, 493 P.2d 301, 302 (1972) (finding that "the Legislature intended to limit the power of the city in enacting ordinances regarding obscene or profane language to situations where there is a breach of the peace").

#### Statute or Ordinance

While the common law and general ordinances in various Utah cities provide for a cause of action against a nuisance, a greater clarity could be achieved if the state of Utah, or individual cities, enacts a statute or ordinances, specifically regulating unprotected wireless access that reaches off the private property of the network's owner. If a municipality enacts an ordinance prohibiting any

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nuisance relating to health, safety and public welfare, including protection against *moral offenses*, and the subject matter of the ordinance has not been preempted by state statute, the municipality has properly exercised its police power. *See, e.g., Dairy Prod. Servs., Inc. v. City of Wellsville*, 2000 UT 81, ¶ 12, 13 P3d 581.

Allowing one's wireless to invade the neighbor's property without a filter or password is not First Amendment speech. Governments may prohibit any nonverbal activity if its primary purpose is not "expression" of an idea. For instance, "the elements of nonverbal expression inherent in nude sunbathing are not sufficiently distinct to warrant constitutional protection." McQUILLIN, *supra*, at § 24:112. Enabling a network used by its owner primarily for internet access, or to gain publicity for a commercial internet service, is not primarily "expression."

The state may not enact a statute to prevent an act that is believed will become a nuisance prior to its occurrence. *See id.* § 23:63. Thus, the state cannot enjoin my neighbor from installing wireless because it "knows" him or her to be unlikely to make it secure. In contrast, the nuisance occurs when the access signal is projected outside of its owner's property and onto public property or the property of an adjacent landowner. It is an existing, not merely an anticipated, nuisance. The neighboring landowners, from that time forward, must take precautions to ensure that the unwanted

wireless signal is not used to access pornography on their property. The nuisance is the projection of this problem, just as spilling infectious refuse onto the neighbor's property is a nuisance properly subject to the law, even if the neighbor successfully keeps his or her children from touching the refuse.

Unsecured wireless internet access intruding uninvited on private or public property certainly creates harms as offensive as those addressed by the nuisance laws and local ordinances addressed above. These include the risks of a minor's exposure to pornography and the legitimate offense adults may feel with the risk that those on their property may freely view obscene and other adult materials. Some may argue that the risk of exposure of children to pornography is not a sufficient harm for the state to act, or that a property owner's interest in not permitting adults to access pornography on their property is an insufficient property interest. However, the law in the United States has clearly affirmed these interests as "compelling" interests of the state, warranting regulation even if other rights are affected.

### The State's Interest in Protecting Minors

The state's right to act to limit children's access to internet pornography is rooted in two constitutionally recognized principles: 1) the state's separate, legitimate interest in protecting minors, and 2) the state's obligation to protect parents' right to control the method and content of their children's education.

### The State's Duty to Minors

Our law "conclusively presume[s] that infants do not have the mental capacity and discretion to protect themselves from the artful designs of adults."<sup>16</sup> Thus, many kinds of legislation have been enacted to protect minors from the dangers of the adult world, and even from themselves. In Utah, we protect minors from those who would "sell, offer to sell, or otherwise furnish any alcoholic beverage or product" UTAH CODE ANN. § 32A-12-203 (2005), or permit alcohol consumption by minors, *see id.* § 32A-12-217 (2005), employ certain minors during school hours or in hazardous work, *see id.* §§ 34-23-302 (2005) *et seq.*, provide tobacco products to minors, *see id.* § 76-10-104 (2003), or permit minors to use tobacco in a place of business, *see id.* § 76-10-103 (2003), provide handguns and certain other weapons to a minor, *see id.* § 76-10-509.5 (2003), body pierce or tattoo a minor, *see id.* § 76-10-2201 (Supp. 2002), or even enter into a contract with a minor, *see id.* § 15-2-2 (2005).<sup>17</sup>

In *Reno v. ACLU*, 521 U.S. 844, 869 (1997) the Supreme Court reaffirmed that "there is a compelling interest in protecting the physical and psychological well-being of minors' which extend[s] to shielding them from indecent messages that are not obscene by adult standards." *Id.* at 869 (quoting *Sable*



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*Commc'ns, Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

### Parental Rights

Parents have the right to secure and control their household. If a neighbor broadcasts an unsecured wireless internet connection, parents have no ability to restrict that signal from entering their home. The Supreme Court has "recognized that [] parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." *Ginsberg v. New York*, 390 U.S. 629, 639 (1968). Utah courts have followed suit, stating: "High among the ideals of individual liberty which we consider essential in our free society are those which protect the sanctity of one's home and family." In re *Castillo*, 632 P.2d 855, 856 (Utah 1981) (citations omitted). Minors can access pornography through unsecured internet connections without the knowledge or approval of their parents. Because the state respects parental authority, it must provide the "support of laws designed to aid discharge of that responsibility." *Ginsberg*, 390 U.S. at 639. Parents have the right to decide how their children are educated and parents "should be the ones to choose whether to expose their children to certain people or ideas." *Troxel v. Granville*, 530 U.S. 57, 80 (2000) (quoting In re *Custody of Smith v. Stillwell*, 969 P.2d 21, 31 (Wash. 1998)).

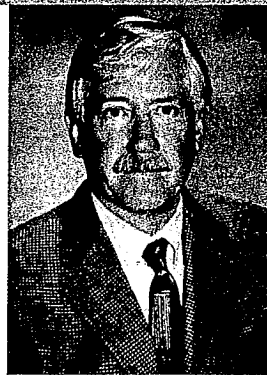
Some may argue that if rich parents did not spoil their children with devices capable of accessing wireless networks, those parents would not have to worry about unsecured WiFi hot spots. Certainly, a parent may decide that laptops, wireless enabled cell phones, and other wireless devices are useful tools in promoting education, safety, and legitimate recreation. Moreover, some teens purchase their own wireless enabled devices. The obligation of the state to enact laws that support parental choices applies anyway, as the law recognizes "parental control or guidance cannot always be provided." *Ginsburg*, 390 U.S. at 640.

The responsibility for protecting children rests with parents; however, the government must support parental choice. Yet, today, American parents anguish as their choice for a porn-free home is sabotaged by unsecured wireless networks that carry destructive images into public places and that spill over the neighbor's fence. An unfiltered wireless connection in public spaces or that reaches into another's private property defeats parents' efforts to regulate their children's internet usage. Those who deploy wireless connections should be responsible for taking the simple precautions to protect minors.

### Moral Nuisance Torts

The availability of pornography is not just an issue for households with minor children. Many adults object to pornography, and are legitimately horrified by the risk that pornography can be easily

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accessed on their private property and on public property that they and their families frequent. The law has long recognized the doctrine of moral nuisances. Brothels, houses of ill fame, bawdy houses, and houses of prostitution appeared in many nineteenth century nuisance cases; the moral concerns underlying these cases are shared by many today and continue to be a basis for nuisance law.<sup>18</sup> "A municipal legislative body is vested with authority to adopt such ordinances as it may deem necessary for the promotion of public morals and the suppression of vice within its corporate limits." McQUILLIN, *supra*, at § 24:112.

A recent example of a moral nuisance claim is *Mark v. Oregon State Department of Fish & Wildlife*, 974 P.2d 716, 718 (Or. Ct. App. 1999). In this case, a couple purchased property bordering a beach at a wildlife refuge that attracted nude sunbathers. The court held that "[u]ndesired exposure to sexual activity... is one of the traditional grounds for finding either a public or a private nuisance." *Id.* at 719.

### Privacy Interests of Property Owners

The Supreme Court has always recognized the general right of a private property owner to exclude unwanted speech. Certainly, if expressive speech can be restricted based on the right of a private property owner to keep it out, the non-expressive "seepage" of

wireless access – not itself speech of any kind – can easily be justified as a type of harm subject to state regulation.

"[U]n willing listeners may be protected when within their own homes." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). In *Frisby*, the Court emphasized the sanctity of the home as a refuge from unwanted speech. In *Hill v. Colorado*, 716 530 U.S. 703, (2000), the Court reiterated that "[t]he unwilling listener's interest in avoiding unwanted communication has been repeatedly identified," *Id.* at 716 and protected by the Supreme Court. Further, "[t]he right to avoid unwelcome speech has special force in the privacy of the home and its immediate surroundings." *Id.* at 717. Utah has a strong tradition of protecting a property owner's right to exclude unwanted speech. See, e.g., *Utah Gospel Mission v. Salt Lake City Corp.*, 316 F. Supp. 2d 1201, 1224 (D. Utah 2004), *aff'd*, 425 F.3d 1249, 1258 (10th Cir. 2005).

Recently, the "Do-Not-Call Registry Act," 15 U.S.C. § 1601 (2003), was upheld based on privacy rights. In *Mainstream Marketing Services, Inc. v. FTC*, 358 F.3d 1228 (10th Cir.), *cert. denied*, 543 U.S. 812 (2004), the Tenth Circuit explained that "a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions." *Id.* at 1237-38 (quoting *Frisby*, 487 U.S. at 484). Similarly, with respect to the "Pandering Mail Act," the Supreme Court held the act may impede the flow of valid ideas into a home; but "no one has a right to press even 'good' ideas on an unwilling recipient." *Rowan v. United States Post Office Dep't.*, 397 U.S. 728, 738 (1970). The Court found this act constitutional even though the homeowner may retrieve and destroy any sexual material in the mailbox before it is opened. The risk of exposure is enough. Similarly, the risk of exposure through unwelcome wireless access is enough.

### Decency on Public Property

Common sense supports the idea that pornography use should be zoned away from areas frequented by the general public. No community, including Las Vegas, allows the performance of explicit sexual conduct in public places, including streets and parks, nor on government property. A government should not condone the use of pornography, let alone sponsor it, on the property it holds in trust for all of its citizens, including children and recovering pornography addicts. If a government provides or allows unsecured unfiltered wireless internet access on its property, it is doing just that – at least until pornography on the internet is effectively regulated. Considering the Government's constitutionally recognized interests in protecting minors, as discussed above, and in preserving public morality generally, it is ironic that, to date, many governmental entities in Utah allow (and in many instances provide) free, unfiltered internet access.

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Many of the same issues arise with hot spots in malls and other non-government public spaces. Minors regularly gather in malls and other public places without the supervision of their parents or guardians. In these places, minors who want to find pornography can freely access it with a wireless connection on which they are entirely untraceable and unaccountable. They show their finds to peers and may even pressure other teens in the area to look at what they have found. Although many minors use laptop computers for this purpose, new developments in technology mean that internet pornography through wireless networks is accessible on other common devices such as wireless-enabled game players, smartphones, Blackberries, PDAs, and so forth.

Another reason why wireless connections in parks and malls need to be secured relates to the harmful secondary effects that may flow from the use of internet pornography in these areas. Courts have upheld the geographical zoning of locations where adult material is accessible. In *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), the Supreme Court upheld a city zoning ordinance restricting the location of "adult motion picture theatres" against a First Amendment challenge. A laptop in a public area with unfettered access to internet pornography is an issue of discrete geographical concern, just as is a geographically situated adult bookstore.

The Supreme Court has held that zoning regulations limiting where, geographically, adult material can be hawked are subject only to intermediate constitutional scrutiny under the "time, place and manner" doctrine. *Id.* at 46. The secondary effects relied upon in the zoning cases apply with equal force in the wireless access context. An adult business "tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere." *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 55 (1976). A geographical location adorned with computer screens displaying pornography would likely suffer the same fate.

Other possible side-effects of pornography use in public spaces include the risks of inappropriate sexual behavior among minors, attraction to the area of sexual predators, including pedophiles and rapists, and unwanted exposure of pornography to passing citizens.

Sexually explicit content and ubiquitous advertising will be more prevalent in networked places. Citizens will carry this content with them into the networked public square. We will all potentially be more 'captive' in networked public places – on buses, in subway cars, in parks and government buildings – to speech that we have generally

been able to avoid in material public places.<sup>19</sup>

What woman wants to jog along a path populated by benches of men viewing pornography on their laptops or handheld devices? What parent wants younger children playing in a park where pedophiles go to access internet pornography? Of course, not all internet users in parks and malls access pornography, but the internet porn problem has become so extensive that the Government can be certain that a surprisingly large proportion of internet use involves pornography.

### Practicality of WiFi Regulation

The state can address the problem of wireless networks by simply requiring passwords, or other limitations on access, or requiring reasonable content filtering on free networks. Such a regulation does not deny any adult the right to use the internet, set up a wireless network, or access adult material thereon. It simply restricts the manner in which one person's decision to have unfiltered wireless access affects others. Everyone continues to have unfettered access to any internet service that is not wireless and to any wireless network that is password protected, filtered or subject to any other reasonable means of limiting the unapproved access by minors and the use of pornography in public spaces.

Such a regulation would not be preempted by federal law

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because it applies only to wireless networks deployed in the geographical confines of Utah and because it does not address any issue currently covered by any federal statute.

Some may argue that such a regulation ignores economically disadvantaged citizens who must rely on free wireless internet. Few, if any, economically disadvantaged citizens will be affected by such a regulation as the price of portable devices (such as the newer PDAs and laptops) that enable connection to wireless networks is more prohibitive than the cost of basic internet access service. In any event, anyone who is economically disadvantaged may still, regardless of this regulation, freely access protected wireless connections – for example, connections at public libraries. Indigents have no recognizable right to access pornography for free. They can continue to use the internet for other purposes on filtered connections.

### Access at Airports

The trend to provide wireless internet access at airports is growing. Generally, airports need not worry about this type of regulation because most airports already secure their wireless networks and require credit cards for wireless use.

Nonetheless, the state could decide to make an exception for wireless access in airports without frustrating the overall purposes of WiFi regulation. Airports do not pose as many of the access dangers as other public places. Airports are not regularly used as gathering points for minors. Airports are typically not conveniently located, and airports charge anyone parking in their lots a considerable fee, thereby deterring minors from using airport property for internet use. Moreover, internet signals at airports are notoriously weak and, thus, the ability of an internet user to download pornography, which typically requires huge bandwidth, is correspondingly reduced. Finally, although some people have more than enough time to spare sitting in airports, these people are rarely minors without a parent, coach or other supervisor. Few teens undertake air travel without an adult. As more and more adults protest the use of pornography in public places, however, airports will want to install protections even if minors are not present.

Finally, if an airport chooses to continue to provide free wireless internet access, it can install a filter and still evade liability under such a regulation.

### Enforcing Wireless Connection Regulation

Regulation of wireless networks does not require enforcement officials to drive the neighborhood seeking unsecured wireless signals. Having a law against speeding does not require a police officer with a radar gun on every corner, and making daytime lawn watering illegal does not require full-time city sprinkling

monitors. Law enforcement may pursue violations that come to their attention, just as they do other violations of law.

Moreover, enforcement is likely to be effectively accomplished without significant involvement of state efforts. As the public becomes aware of the wireless regulation and its goals, most residents will voluntarily comply. Moreover, high-profile public persons, governmental entities, shopping malls, and others will voluntarily comply to avoid negative publicity.

If homeowners notice that the wireless connections available on their computer include an unsecured network, they can call the neighbors and ask them to check their wireless system for password protection. Few neighbors will resist such a request, particularly when made aware that the regulation is enforceable by law. Citizens may form community groups to create public awareness of the regulation and such groups may be called upon to contact neighbors and businesses and request that they secure their wireless connections. In Utah, many local and state-wide groups fighting pornography may be willing to help with encouraging compliance.

If some network owners remain stubbornly resistant, citizens may report the unsecured wireless connections to enforcement officials. Citizens could easily record the necessary evidence by taking a picture of their computer screen containing the date, time, and accessed wireless connection.

Law enforcement officers currently investigate reported zoning violations, barking dogs, loud parties, and fights. Officers may just as easily respond to a complaint by driving by and checking for unsecured wireless connections. In sum, enforcement of a WiFi regulation is no more burdensome than countless other acts and local ordinances.

### Conclusion

Parents are striving to protect children (and themselves) from the dangers of pornography by regulating the use of computers at home and at schools, avoiding areas of town with adult stores and theaters, and restricting cable channels. Unfortunately, unsecured, unfiltered wireless internet connections make online content, including pornography, just a mouse click away at a surprising number of locations.

With new technology comes a need to consider the risks and benefits, and ways to optimize safety with measured regulations. A simple requirement that wireless networks be either password protected (or secured in another way) or reasonably filtered is not burdensome, unconstitutional, or impractical to enforce.

1. See XMission Wireless, Locations, <http://www.xmission.com/wireless/index.html> (last

- visited July 19, 2007).
2. See The Wi-Fi-FreeSpot Directory, <http://www.wififreespot.com/ut.html> (last visited July 18, 2007).
  3. See, e.g., Andrew Adams, *Hidden Dangers of WiFi Hotspots*, KSL NEWSRADIO, July 19, 2007, <http://www.ksl.com/?nid=148&sid=1502228>.
  4. FEDERAL BUREAU OF INVESTIGATION, A PARENT'S GUIDE TO INTERNET SAFETY: INTRODUCTION, <http://www.fbi.gov/publications/pguide/pguideee.htm> (n.d.).
  5. SHARON COOPER ET AL., MEDICAL, LEGAL & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION: A COMPREHENSIVE REVIEW OF PORNOGRAPHY, PROSTITUTION, AND INTERNET CRIMES 198 (2005) (citing D.H. SCHETKY & A.H. GREEN, CHILD SEXUAL ABUSE: A HANDBOOK FOR HEALTH CARE AND LEGAL PROFESSIONALS (1998)).
  6. See Julian Sher & Benedict Carey, *Debate on Child Pornography's Link to Molesting*, N.Y. TIMES, July 19, 2007, at A20, available at 2007 WLNR 13735383.
  7. *Id.*
  8. Dispute about where to draw the line on what sexual material is harmful to minors may have lost steam. A consensus is forming around a concept of "sexually explicit material." E.g., *ACLU v. Gonzales*, 478 F. Supp.2d 775 (2007) (using the term "sexually explicit" content or material over 60 times to describe online material that would be harmful to minors and relying on numerous reports based on being able to make such a distinction). Various existing federal statutes expressly define what is "sexually explicit." E.g., 42 U.S.C. § 13031(c)(5).
  9. *Gonzales*, 478 F. Supp. 2d at 788.
  10. Kevin G. Hall, *Wi-Fi Helps Child Porn Exchanges Thrive: The Proliferation of Easy Internet Access has given Traders of Child Pornography the Shelter of Anonymity*, MIAMI HERALD (July 17, 2007), at A1, available at 2007 WLNR 13564186.
  11. See Child Internet Protection Act (CIPA), Pub. L. No. 106-554, 114 Stat. 2763, 2763A-335 (2000) (codified as amended at 20 U.S.C. § 9134(f), 47 U.S.C. § 254(h)(6) (2002) (upheld in *United States v. American Library Ass'n*, 539 U.S. 194 (2003)).
  12. See *Miller v. California*, 413 U.S. 15, 24 (U.S. 1973).
  13. See 18 U.S.C. § 2256(8) (defining "child pornography").
  14. John Copeland Nagle, *Moral Nuisances*, 50 EMORY L.J. 265, 265 (2001). See also *Branch v. Western Petroleum*, 657 P.2d 267 (Utah 1982) (waste water); *Vincent v. Salt Lake County*, 583 P.2d 105 (Utah 1978) (drainage).
  15. See, e.g., *Rushing v. Kansas City So. Ry.*, 185 F.3d 496 (5th Cir. 1999) (holding that federal law did not preempt a nuisance claim against the noises and vibrations caused by a nearby railroad); *People v. McDonald*, 137 Cal. App. 4th 521, 539 (Ca. Ct. App. 2006) (urinating so others can see); *Esposito v. New Britain Baseball Club, Inc.*, 895 A.2d 291 (Conn. Super. Ct. 2005) (fireworks display at a baseball stadium); *Walker v. Laningham*, 148 P.3d 391, 395 (Colo. Ct. App. 2006) (holding that a neighbor's barking dogs constituted a nuisance); *Biglane v. Under The Hill Corp.*, 949 So.2d 9 (Miss. 2007) (noise from a saloon); *Shaw v. Coleman*, 645 S.E.2d 252, 259-60 (S.C. Ct. App. 2007) (firing of guns and air cannon); *Reed v. Cloninger*, 131 P.3d 359 (Wyo. 2006) (flooding of basement from irrigation water).
  16. *New York v. Stringfellow's of New York, Ltd.*, 684 N.Y.S.2d 544, 551 (N.Y. App. Div. 1999). In this case, an adult establishment attempted to skirt the city's zoning ordinances by allowing minors to enter if they signed a waiver releasing the establishment from any liability for any damage caused to them.
  17. Contracts are not valid when made with minors so as "to protect infants against their own mistakes or improvidence and from the designs of others." 43 C.J.S. *Infants* § 210 (2007) (describing purposes of the infancy doctrine).
  18. See generally Nagle, *supra*, note 14.
  19. Timothy Zick, *Clouds, Cameras, and Computers: The First Amendment and Networked Public Places*, 59 FLA. L. REV. 1, 4 (2007).

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